

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7848 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHARATKUMAR LALJIBHAI ANAM

Versus

MANDVI MUNICIPALITY

Appearance:

MR CH VORA for Petitioner

MR YS MANKAD for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 17/02/97

ORAL JUDGEMENT

Rule. Mr.Y.S.Mankad, learned counsel waives service of notice of Rule on behalf of respondent.

At the request of learned advocates appearing for the parties, the petition is heard today.

By means of filing this petition under Art. 226

of Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order directing the respondent to restore two cabins in their original position which are already removed. The petitioner has also prayed to direct the Municipality to pay suitable compensation to the petitioner for resorting to illegal action of removing two cabins. The petitioner has further prayed to issue a writ of mandamus or any other appropriate writ or order directing the respondent not to remove or demolish third cabin of the petitioner situated on Bhuj-Mandvi Road at Mandvi, Dist. Kutch.

In view of the affidavit in reply filed by the Chief Officer of respondent Municipality, prayer to issue writ directing the respondent to restore two cabins which are already removed, cannot be granted at this stage. Hence said prayer is rejected. However from the affidavit in reply, it is evident that third Rekdi belonging to the petitioner is in existence and is not removed as on today. Under the circumstances, necessary direction deserves to be granted to the respondent Municipality not to remove it without following due procedure of law.

For the foregoing reasons, the petition partly succeeds. The respondent is directed not to remove the third Rekdi without following due procedure of law. In the affidavit in rejoinder, a grievance is made that inspite of Status Quo having been granted by the court, the respondent has constructed a staircases and committed breach of status quo. Thus in the rejoinder what is sought to be emphasized is that the order passed by the court is flouted by the respondent. If that is so, it would be open to the petitioner to initiate contempt proceeding before appropriate court.

Rule is made absolute to the extent indicated hereinabove, with no order as to costs.
